

1 information regarding the amount of damages or perhaps the  
2 number of pay phones at issue that discovery is likely going  
3 to provide that information.

4 As a result, we're not -- the Bureau does not  
5 think supplemental complaints are necessary. We're not  
6 certain what they're going to -- what kind of information  
7 they'll provide.

8 MR. BROWN: Your Honor, may I be heard in response  
9 to the Bureau's comments?

10 JUDGE STEINBERG: Wait. Just wait one second,  
11 please.

12 (Pause.)

13 Okay. Mr. Brown?

14 MR. BROWN: The only point I can make to that is  
15 that the Bureau says, in fact, they don't know. That is no  
16 basis for doing away with the Bureau -- in fact, the  
17 Commission's own rules. The fact that the Bureau thinks  
18 that there may not be any information provided is not  
19 grounds for doing away with the supplemental complaint rule.

20 JUDGE STEINBERG: Well, let me ask, Mr. Brown -- I  
21 mean I'm looking at 1.722(c).

22 Is there -- I mean is there any reason why the  
23 items detailed in that can't be rolled into a discovery  
24 request so that you get the same information without  
25 spending -- how long would it take to do a supplemental

1 complaint? I mean I just don't know. And then an answer?

2 A month? Two weeks for each?

3 MR. BROWN: Well, normally, answers are done  
4 within 20 days of the complaint. I don't know how long it  
5 would take for the Complainants to prepare one but --

6 JUDGE STEINBERG: Because I've got a -- I've got a  
7 discovery -- I've got a whole schedule and -- where -- you  
8 know, that I've worked out and I've given what I thought is  
9 a very generous 10 weeks for discovery. Then I've got some  
10 other special procedures in place for this case and  
11 ultimately with a hearing date of October 15th.

12 I just want to -- is there any reason why all this  
13 stuff couldn't be put -- translated from the language of  
14 1.722(c) into the language of an interrogatory and a request  
15 for production of documents?

16 I think that might be the better way to go and  
17 that way you can get all of the -- all of the information  
18 you want through the discovery procedures and I think you  
19 could take a look at the answers you get with the responses  
20 to the discovery and determine how much they're asking for.  
21 You could ask an interrogatory, how much are you asking for  
22 and what's the basis for it? which is essentially what --  
23 and, what's the basis for it? What's your methodology? and  
24 all this other stuff that's in 1.722.

25 MR. BRUGGEMAN: Your Honor, I think one of the

1 concerns that the defendants have is, you know, in the  
2 hearing designation order and in the FCC's complaint process  
3 the Complainants have the burden of both --

4 JUDGE STEINBERG: That's right.

5 MR. BRUGGEMAN: -- proof and production. This is  
6 not a case where the information that the Complainant's need  
7 to prove their claim is not within their ability to have.  
8 They may as a factual matter not have their billing records  
9 any more.

10 But I think we're concerned that by doing the  
11 discovery first basically shifts the entire burden to us to  
12 have to --

13 JUDGE STEINBERG: No. You don't --

14 MR. BRUGGEMAN: -- have to disprove the amount of  
15 damages.

16 JUDGE STEINBERG: -- do discovery first, you all  
17 do it together.

18 MR. BRUGGEMAN: Mm-hmm.

19 JUDGE STEINBERG: If you want to.

20 MR. BRUGGEMAN: Mm-hmm.

21 JUDGE STEINBERG: If you want to wait until -- I  
22 mean August 3rd is the date that all discovery will end and  
23 not the date the last discovery request is filed, but  
24 everything is timed to end on August 3rd with one exception.

25 I know ways where you could file a discovery

1 request tomorrow and through motions and extensions and this  
2 and that and the other thing, you can delay your answer for  
3 months. That's what I call gamesmanship.

4 If I perceive that there's gamesmanship being  
5 played in an attempt to avoid a full disclosure and sort of  
6 run out the discovery clock I'm not going to tolerate that  
7 and the party seeking the information is going to get that  
8 information.

9 But I mean if you want to wait until July 15th you  
10 can do that but I mean I would do it next week if you could  
11 and get the -- well, okay, I'm going to rule that I don't --  
12 I think it would be better to proceed under the Commission's  
13 discovery rule rather than the supplemental complaint rule  
14 because I think all of the information that would be  
15 generated through supplemental complaints could also be  
16 generated through the discovery procedures. Okay. Yes?

17 MR. BROWN: Your Honor, may I have a point of  
18 clarification?

19 JUDGE STEINBERG: Sure.

20 MR. BROWN: You said the discovery rule. The  
21 discovery rule limits the number of interrogatories.

22 JUDGE STEINBERG: No, not -- we're under 1. -- in  
23 Section 1.311 in the following. We've abandoned 1.7 --

24 MR. BROWN: Okay.

25 JUDGE STEINBERG: -- stuff.

1 MR. BROWN: Thank you.

2 JUDGE STEINBERG: And 1.3 whatever it is on  
3 interrogatories says there's no limit on interrogatories,  
4 but don't overdo it.

5 MR. JACKSON: Your Honor, just for the record, I'm  
6 not --

7 JUDGE STEINBERG: Yes, sir?

8 MR. JACKSON: -- I'm not going to argue the point  
9 because I think, you know, we do need to move on. But I  
10 would like to simply interpose an objection to the --

11 JUDGE STEINBERG: Sure. If the appropriate time  
12 comes you can -- you can all write this down. I'm sure  
13 everybody -- you can start today a list of egregious errors  
14 Judge Steinberg --

15 (Laughter.)

16 -- has made and you can make this error number 1  
17 and then the people I rule in favor of will say, a list of  
18 terrific rulings Judge Steinberg made --

19 (Laughter.)

20 -- in our favor, and they can list this as number  
21 1. I'm not -- I can't please everybody and you think I'm  
22 absolutely wrong --

23 MR. JACKSON: No. I --

24 JUDGE STEINBERG: -- and they're --

25 MR. JACKSON: -- appreciate that.

1 JUDGE STEINBERG: -- and they're breathing a sigh  
2 of relief.

3 MS. INGRAM: Your Honor, we don't know if they're  
4 wrong or not but we'd also -- Verizon would like to preserve  
5 this objection --

6 JUDGE STEINBERG: Sure, yeah.

7 MS. INGRAM: -- to the fact that a waiver of this  
8 rule could somewhere down the road affect our ability to  
9 appeal any adverse outcome. We just --

10 JUDGE STEINBERG: Oh, no, no --

11 MS. INGRAM: -- we're preserving the right to  
12 appeal the failure to follow --

13 JUDGE STEINBERG: Oh, sure.

14 MS. INGRAM: -- the Commission's rules.

15 JUDGE STEINBERG: Sure. No, I understand that.

16 MR. KINGSLEY: Your Honor, Bell South would.

17 JUDGE STEINBERG: Yeah. All of the -- all of the  
18 Defendants do.

19 MR. KINGSLEY: Thank you.

20 JUDGE STEINBERG: Let's see. There's one --  
21 there's one discovery avenue I don't want you to use and  
22 that is I don't want this depositions upon written  
23 interrogatories stuff. It's in 1.316.

24 So you can use all the -- all of the discovery,  
25 you can use interrogatories, depositions, request for

1 production of documents, request for admissions. I don't  
2 know -- I don't know how that would apply here, but it  
3 might.

4 But I don't want you to use depositions upon  
5 written interrogatories. If you -- I would prefer that if  
6 there are depositions you would just go into a courtroom  
7 with a reporter and take the depositions.

8 MS. INGRAM: To clarify that, Your Honor, I think  
9 the Commission's rules somewhere say that it has to be a  
10 courtroom with a reporter and there's another place where  
11 you can --

12 JUDGE STEINBERG: Oh, you can --

13 MS. INGRAM: -- go into the typical --

14 JUDGE STEINBERG: -- you can do it in a  
15 firehouse --

16 MS. INGRAM: Okay.

17 JUDGE STEINBERG: -- or in somebody's kitchen.

18 MS. INGRAM: But we are going to offer it --

19 JUDGE STEINBERG: Yeah. You can do it any way you  
20 want.

21 MS. INGRAM: All right.

22 JUDGE STEINBERG: As long as there's a certified  
23 reporter there.

24 MR. KRAMER: We want to do it in the central  
25 office at 21st and M.

1 MS. INGRAM: I just want an expert.

2 (Laughter.)

3 JUDGE STEINBERG: Now there's another -- there's  
4 another thing and Mr. Kramer brings -- we're going to --  
5 we'll get to your letter. I'm kind of -- we're going to get  
6 to your letter.

7 But there's a problem or a potential problem of  
8 massive amounts of documents. How do you want to handle  
9 that? I can't see a party -- if there are, you know,  
10 hundreds of thousands of pages of documents or tens of  
11 thousands of pages of documents I -- my inclination is if  
12 that's the type of situation I don't know if people want to  
13 be spending money for photocopying expenses and shipping  
14 expenses to get them over to the person that asked for them.

15 I mean that's the way it's normally done where you  
16 ask for a document and you get a copy of it in the mail or  
17 in a box or through somebody else, but if it's tens of  
18 thousands of pages of documents is there a consensus as to  
19 how that's going to be handled?

20 (No response.)

21 I guess there's no consensus. Do you want to --  
22 do you want to wait for the problem to come up?

23 MR. BROWN: Your Honor, I think -- William Brown,  
24 Southwestern Bell again. It sounds like an issue that can  
25 be solved among the parties for --



1 JUDGE STEINBERG: Okay.

2 MR. BROWN: -- for individual requests.

3 JUDGE STEINBERG: Okay. So maybe I'm anticipating  
4 something that I might not have to anticipate.

5 MR. BRUGGEMAN: I think it's also complicated by  
6 the fact that some of these may be microfiche or electronic  
7 --

8 JUDGE STEINBERG: Yeah.

9 MR. BRUGGEMAN: -- records. It's not even all  
10 paper records.

11 JUDGE STEINBERG: Well, there was one thing that I  
12 noted. I skimmed Mr. Thompson's discovery requests and I  
13 didn't really read it for content except I was -- I found  
14 the -- well, I'm not going to say what I found humorous, but  
15 it wasn't -- it's no reflection on -- it had hidden in that  
16 lawsuit.

17 (Laughter.)

18 I kind of find that -- I kind of found that funny  
19 where your client got sued for not paying the UCAL.

20 MR. BRUGGEMAN: Correct.

21 JUDGE STEINBERG: And now -- and I don't know what  
22 happened to that but maybe now -- maybe you paid it and now  
23 you get it back and I just -- I have a weird sense of humor,  
24 but I found that humorous.

25 I think your first interrogatory you asked for

1     certain records in a certain form and I'm not going to  
2     require anybody -- for instance, if Mr. Goodman -- if  
3     Verizon keeps its records in this form I'm not going to make  
4     him go through the trouble and expense of converting it to  
5     the way you want -- you like it. If he got it in this  
6     form --

7             MR. BRUGGEMAN: Right.

8             JUDGE STEINBERG: -- he's going to produce it in  
9     that form.

10            MR. BRUGGEMAN: I tried to give him some options.

11            JUDGE STEINBERG: Okay. Well, you and he can talk  
12     about it but I'm saying --

13            MR. BRUGGEMAN: Right.

14            JUDGE STEINBERG: -- if there's an objection to  
15     something like that the objection's going to be sustained  
16     and if you have to go over and look at the documents on his  
17     computers because he doesn't want to give you the software  
18     that's fine with me.

19            MR. BRUGGEMAN: Right.

20            JUDGE STEINBERG: And, you know, keep that in  
21     mind.

22            MR. BRUGGEMAN: Right.

23            JUDGE STEINBERG: If you ask for records that --  
24     this goes for the Plaintiffs, Complainants and Defendants,  
25     if you ask for records that the other party doesn't have I'm

1 not going to require that they generate the records for you  
2 again in the form that you like.

3 If they keep their records by phone number and you  
4 keep your records by client or vice versa and they said,  
5 "Well, we would happily give you the records if you give us  
6 the phone numbers" I can't make them give you something they  
7 don't have and I'm not going to require them to change their  
8 business records to comport with the way your business  
9 record are.

10 If that winds up in an absolute brick wall, that's  
11 too bad. They can only give you what they have and I'm not  
12 going to make any party go to the expense of making it  
13 convenient for another party. I mean that's as a general  
14 rule, but that's the only thing that -- it hit me sort of in  
15 the face. Does anybody want to be heard on that?

16 (No response.)

17 Okay.

18 MR. KRAMER: Well, Your Honor, just I think -- I  
19 hear you and we don't necessarily disagree with the basic  
20 principle.

21 I think there are going to be times when, for  
22 example just to stick to the example you just gave, one of  
23 the issues we discussed yesterday in the informal conference  
24 was the ability to produce records based on a request for  
25 records on the name of the subscriber versus the telephone

1 number.

2 In fact, there is a telephone number -- the  
3 telephone company's position was that they keep their  
4 records by telephone number and not by subscriber name. In  
5 fact, of course, there is a subscriber name associated with  
6 every telephone number.

7 So one issue that I want to flag for you because  
8 it could come up is do you search the database by telephone  
9 number or do you search the database by name?

10 JUDGE STEINBERG: Well, if it's a question of  
11 something being in the database then you search it by -- if  
12 you can -- if you can retrieve it -- if you can retrieve it  
13 by either method -- I mean if there's a method by which you  
14 can get the information that's not going to cause them to  
15 change their entire system then you'll get the information.

16 MR. KRAMER: I --

17 JUDGE STEINBERG: I mean I think that's  
18 reasonable. I mean if all you do is you search for  
19 something in one block of the database instead of another  
20 block I think that's doable. If it takes a little extra  
21 time or a little extra effort, that's fine.

22 But what I'm -- what I'm saying is that I can't  
23 expect them to create whole documents. I can't expect  
24 anybody to create a whole new -- maybe "documents" is the  
25 wrong word -- a whole new systems just because of this

1 litigation and I don't think that's unreasonable.

2 MR. KRAMER: Right. And again --

3 JUDGE STEINBERG: I think that's something --

4 MR. KRAMER: -- we agree.

5 JUDGE STEINBERG: -- you can easily work out. I  
6 do believe in full -- I do believe in liberal discovery and  
7 full disclosure and no surprises. You might -- you know,  
8 that could be of guidance to you, too. Don't make problems  
9 where there aren't any problems and don't create unnecessary  
10 roadblocks because I don't like games, I don't like people  
11 playing games.

12 I think I'm experienced enough to know what the  
13 games are, plus we used to do it on occasion, I mean when  
14 appropriate.

15 (Laughter.)

16 Now let's get to Mr. Kramer's letter. Did  
17 everybody get a copy of it?

18 (Pause.)

19 Okay. Let me just make a little summary. Mr.  
20 Kramer sent a letter addressed to me on May 21st -- dated  
21 May 21, 2001 and he requests some rulings among which --  
22 that I rule as to the type of proof the Complainants would  
23 need to present at the hearing in order to satisfy their  
24 burdens and the type of evidence that they should be  
25 required to submit at the hearing.

1 I ruled that he can -- that he may use the  
2 definitions of public and semipublic that are contained in  
3 the local exchange carriers tariffs, rather than the  
4 definitions contained in the hearing designation order and  
5 the Commission's liability order and that at some point the  
6 burden of proof be shifted to the Defendants to prove that  
7 Complainants pay phones were not public.

8 Did I -- is that sort of an accurate summary of  
9 the major points?

10 MR. KRAMER: Yes. That's -- for discussion  
11 purposes, that's --

12 JUDGE STEINBERG: Okay.

13 MR. KRAMER: -- very good. Thank you.

14 JUDGE STEINBERG: Okay. Let's take -- let me ask,  
15 does anybody have any comments on any of this?

16 MR. JACKSON: I think --

17 JUDGE STEINBERG: I'll call Mr. Jackson first and  
18 then --

19 MR. JACKSON: Well, I'd like to start with the  
20 affidavit. We do not agree that he should be permitted to  
21 -- or that the Complainants should be permitted to give a  
22 summary figure in an affidavit and that be the end of their  
23 case.

24 What he is attempting to do is to shift the burden  
25 of production of evidence away from the Complainants where

1 the designation replaces it and shift it onto the  
2 Defendants.

3 If we were to follow this procedure by giving this  
4 number he would essentially get a rebuttable presumption  
5 that he's proved his damages and the burden would then be  
6 shifted to us to disprove the damages and that's not the way  
7 the designation order assigns the burden of proof.

8 With respect to the -- and I would also add, if he  
9 cannot go through his business records and come up with an  
10 accurate number if it's -- then he would not be basing this  
11 damage claim on an accurate affidavit.

12 It seems to me that he has to go through the  
13 business records initially to come up -- to go through this  
14 burdensome process of going through his business records to  
15 come up with this dollar figure to be able to truthfully  
16 state that number in the affidavit.

17 JUDGE STEINBERG: Okay. Let me ask you a  
18 question. He submits an affidavit from John Doe and the  
19 affidavit says, we had 10,000 pay phones and they were all  
20 public, and he says, I rest my case.

21 You cross-examine him and you say to John Doe,  
22 okay, Mr. Doe, do you have personal knowledge with respect  
23 to every single one of these pay phones? and Mr. Doe says,  
24 no, but I've got -- I derived this number from business  
25 records. Where are the business records? Well, they're in

1 the back of the courtroom.

2 Okay. Let's take this telephone number or this  
3 subscriber, Joe's Pizza Parlor. Do you know where that pay  
4 phone was located? No, I don't. Do you know what it was  
5 used for? No, I don't. What it was actually used for, to  
6 use the language in something I read the other day. The  
7 actual use and where they were located and how they were  
8 actually used, not could be used. I'm right about that I  
9 think.

10 He says, gee, I don't know that, and you do a few  
11 more examples. Wouldn't you say that kind of undermines  
12 that affidavit and wouldn't you kind of hope he does  
13 something like that?

14 MR. JACKSON: Well, I would say it undermines the  
15 affidavit, but the way it's --

16 JUDGE STEINBERG: Well, the burden's not going to  
17 shift to you, I'll tell you that.

18 MR. JACKSON: Okay.

19 JUDGE STEINBERG: So you don't have to worry about  
20 that.

21 MR. JACKSON: But it certainly seems that it gives  
22 him the benefit in what is essentially, as Your Honor has  
23 described the procedure, it's giving him the benefit of what  
24 seems to be an evidentiary presumption which the designation  
25 order does not give him.



1 JUDGE STEINBERG: Okay.

2 MR. JACKSON: I don't think -- if I may speak  
3 globally, I don't think that we should be, frankly, in a  
4 position of telling him, of telling the Complainants,  
5 precisely how it is that they must go about proving their  
6 case because, frankly, I don't see this letter -- I don't  
7 think that this letter should be converted into a high  
8 stakes game with, mother, may I do this? Mother, may I do  
9 that?

10 At the end of the day Mr. Kramer has to prove his  
11 damages by the applicable evidentiary standard. The method  
12 that he uses to do that is within his discretion, but at the  
13 end of the day he has to prove those numbers.

14 I don't particularly see it as beneficial at this  
15 stage for us to tell him how it is he can go about doing  
16 that. That's a decision that he has to make and I think  
17 he'll make it -- he'll probably make it very wisely, but I  
18 --

19 JUDGE STEINBERG: You'll -- you'll be able to --

20 MR. JACKSON: -- just don't see that we'll have to  
21 get into that.

22 JUDGE STEINBERG: -- respond after -- after  
23 everybody has --

24 MR. JACKSON: But I don't see that we really have  
25 to get into that degree of detail in telling him what he can

1 do to prove his case.

2 JUDGE STEINBERG: Now Mr. Goodman was next.

3 MR. GOODMAN: Well, just on the factual  
4 hypothetical that you posited, Your Honor, where there was  
5 an affidavit and then the deposition would be -- the  
6 Complainant at that point would not be able to put in any  
7 other evidence?

8 JUDGE STEINBERG: If that was his direct case.

9 MR. GOODMAN: Well --

10 JUDGE STEINBERG: An affidavit saying, we had  
11 10,000 pay phones and they were all public or 80 percent of  
12 them were public. I mean I don't know what his case would  
13 be.

14 MR. GOODMAN: But I mean the -- well, actually I  
15 believe Mr. Kramer's letter asked to attach an affidavit of  
16 this type to a supplemental complaint which we obviously are  
17 not going to be getting. So I had assumed --

18 (Laughter.)

19 -- that under his proposal that we would get this  
20 affidavit early in the process and then would be able to do  
21 discovery of the type that you had suggested, but then if we  
22 have this kind of deposition I would assume that that is all  
23 of the --

24 JUDGE STEINBERG: Well, no, the question wasn't at  
25 the deposition.

1 MR. GOODMAN: Oh, that's --

2 JUDGE STEINBERG: The question was, you know, all  
3 the witness chairs --

4 MR. GOODMAN: That's right.

5 JUDGE STEINBERG: -- are going to be over there.

6 MR. GOODMAN: Okay. Thank you.

7 JUDGE STEINBERG: I don't like it over there.  
8 I'll move it over there because I like my people over there.  
9 I don't know why, I just --

10 No. That would be in court and I mean you -- and  
11 I think that would be -- you could have them all. You can  
12 pull out 8,000 telephone numbers and you can ask them -- you  
13 can -- of any one of them and where they are and how they  
14 were actually used.

15 MR. GOODMAN: I think you would urge us to stop  
16 after the first couple of times.

17 (Laughter.)

18 JUDGE STEINBERG: Well, I don't know, you know.  
19 It depends on how awake I am.

20 MS. INGRAM: I assume they'd give us -- right  
21 before the cross-examination we wouldn't take a break and  
22 have us go digging through --

23 JUDGE STEINBERG: Well, I don't know.

24 MS. INGRAM: -- looking for them, you know.

25 JUDGE STEINBERG: It depends on whether you asked

1 for them or not.

2 MS. INGRAM: Oh, I would propose that they ought  
3 to -- in any affidavit they attach like that the records  
4 ought to come along with it so then I can go see --

5 JUDGE STEINBERG: They'll be in the courtroom.

6 MS. INGRAM: If I'm going to have to test it.

7 JUDGE STEINBERG: Now somebody -- do you want to  
8 comment?

9 MR. THOMPSON: Yeah, I just have a brief comment,  
10 Your Honor. I view this as really just a question of how  
11 each Complainant chooses to present its case and we will  
12 have discovery so both sides shouldn't be surprised by  
13 anything that happens, you know, if we get to the hearing  
14 room.

15 You know, if the Plaintiff takes the stand and  
16 testifies that, you know, he or she knows that all his or  
17 her phones were public phones then the Defendants have the  
18 opportunity to challenge that.

19 JUDGE STEINBERG: Well, I would hope in the  
20 affidavit there would be a basis for the -- in that the  
21 witness would state a basis for that knowledge. I mean now  
22 that would be subject to cross-examination, but I'll tell  
23 you, if they don't ask I'm sure going to ask. I mean  
24 there's nothing precluding me from asking questions.

25 MR. THOMPSON: I'm not --

1 JUDGE STEINBERG: It's a trial.

2 MR. THOMPSON: Your Honor, it's a trial, right.

3 JUDGE STEINBERG: It's a trial that --

4 MR. THOMPSON: Right. We don't do written  
5 pretrial testimony so I don't know why we even need an  
6 affidavit.

7 JUDGE STEINBERG: No. I'm going to order that the  
8 case be a direct written case.

9 MR. THOMPSON: I hope so.

10 JUDGE STEINBERG: And so -- and that way -- and  
11 then everything be in writing unless it's impossible for  
12 something to be in writing, like a last minute change or a  
13 correction or something that --

14 MR. THOMPSON: That's sort of been as a substitute  
15 for this -- this affidavit process?

16 JUDGE STEINBERG: Well, that would be direct  
17 written testimony. That would be an exhibit and it --

18 MR. THOMPSON: Right.

19 JUDGE STEINBERG: -- would be an affidavit of  
20 declaration because each exhibit would have to be verified  
21 by the person. So it would have to be an affidavit or a  
22 declaration under penalty of perjury attached to the exhibit  
23 basically certifying that the material contained in the  
24 exhibit was true and accurate or whatever.

25 MR. THOMPSON: Anyway, I think it's a question of

1 the weight of whatever evidence --

2 JUDGE STEINBERG: Right.

3 MR. THOMPSON: -- that each Complainant presents.

4 JUDGE STEINBERG: Ms. Mehta, do you want to be  
5 heard?

6 MS. MEHTA: The Bureau does not object to the use  
7 of affidavits --

8 JUDGE STEINBERG: Okay.

9 MS. MEHTA: -- and it's not -- the case and the  
10 evidence.

11 JUDGE STEINBERG: Okay. Mr. Kramer, do you want  
12 to respond to anything?

13 MR. KRAMER: Your Honor, Mr. Kleinman has joined  
14 me, my colleague, and I think he would like to speak to the  
15 position.

16 JUDGE STEINBERG: Okay.

17 MR. KLEINMAN: I apologize for arriving late, Your  
18 Honor, I had a personal matter that I could not avoid. It's  
19 been a year since I've had the pleasure of meeting you up on  
20 the 4th floor and let me respond on this issue. I'm going  
21 to avoid Mr. Jackson's invitation to call you mother. I'm  
22 not going to say, mom, how do I prove my case? I also  
23 understand from Mr. Kramer that you've not yet addressed  
24 what is done every day in courts in the country and I'm sure  
25 it's done here at the Commission and that is decide whether

1     you will hear motions in limine to decide how the proof can  
2     go in.

3             JUDGE STEINBERG:   We don't do that.

4             MR. KLEINMAN:   If that's the case then you will  
5     obviously have to make decisions about the extent to which  
6     we will rely upon affidavits.

7             As you saw from the letter, also every day in  
8     courts in this country and used in proceedings such as this  
9     are affidavits which set foundations for, among other  
10    things, business records in the way that you described.   I  
11    do not hear any dispute that business records can be  
12    authenticated as the basis of proving financial facts or  
13    numbers subject, of course, to cross-examination, as you  
14    said.

15            It is a process which has been used here.   You may  
16    learn later that we have reached stipulations with Verizon  
17    on the amounts that were paid as end-user, common-line  
18    charges month by month for three of the formal Complainants.  
19    I am sure that my friend, John Goodman, used business record  
20    summaries as we did in order to reach agreement on the  
21    amount of end-user, common-line charges.

22            It is also not unusual in matters like this or  
23    matters of general applicability to the operation of the  
24    business to be established generally.   It may very well be  
25    that in this case people who did not individually install

1 the pay phone in a particular gas station, but rather are  
2 personally, intimately and historically familiar with the  
3 manner in which the business is conducted would know that  
4 pay phones would not be put in places where their primary  
5 use would be for private rather than public purposes.

6           Were that the case, in other words, proof through  
7 affidavit of what the business practice was it may be that  
8 that person has got adequate familiarity in order to  
9 establish that particular lines or groups of lines if it was  
10 the company's business practice what lines of principal use  
11 with public pay phone service in much the same way that the  
12 telephone company's public pay phones were operated and were  
13 located in the same kinds of places that their public pay  
14 phones were operated without the agony of going through line  
15 by line and talking about for each gas station whether it  
16 was an inside or outside -- a box was actually sitting on a  
17 wall.

18           That's an agony we certainly have an interest in  
19 avoiding. It also seems to me, in addition, that there are  
20 going to be in the same way that there was a stipulation  
21 process which we went through a discovery process here which  
22 could resolve many of these things.

23           I can understand, as I'm sure others could as  
24 well, that Defendants in the position that these companies  
25 are who charge a lot of money for charges and are now being



1 told, "You have been found liable, the only question is for  
2 how much" would have an interest in doing line by line. It  
3 would slow things down, as we know.

4 It may also come out in discovery, however, that  
5 these Defendants have no idea about what uses were put --  
6 that these -- what these pay phones' uses were put to, what  
7 side of the garage, the outside or inside, any number or  
8 actual station it was used for or how it was handled.

9 If we are in that area of uncertainty it seems to  
10 me and if we can establish that it was the business of our  
11 clients who are formal Complainants to put pay phones in  
12 places where the public not the private, you know, would use  
13 them rather than have a principally primary use, I think we  
14 have gone and established by a preponderance of the evidence  
15 that these were public pay phones and not private pay  
16 phones. That certainly should be enough to satisfy the  
17 burden of proof.

18 Discovery, however, will tell us a lot about what  
19 they know as well as tell them what we know. Then I guess  
20 we'll come in October and put it in front of you.

21 JUDGE STEINBERG: Okay. Does anybody have any  
22 further comment on this?

23 (No response.)

24 My inclination is not to tell you how to prove  
25 your case. I know it would be -- I know it would be